

ATTACHMENT 4

Our Ref: C04-023

Chief Executive Officer
Cairns City Council
P O Box 359
CAIRNS QLD 4870

BC Mr Aart Brons

24 September, 2004

Dear Sir,

**RE: APPLICATION FOR A LICENCED BROTHEL AT 11
CAVA CLOSE, BUNGALOW. YOUR REFERENCE -
8/8/564.**

On September 10, 2004 his Honour Judge Skoien delivered his judgement with regard to whether the proposed site of a Licensed Brothel at 11 Cava Close, Bungalow was within an Industrial Area and therefore Code Assessable.

Judge Skoien determined that the site was within an Industrial Area and therefore Code Assessable.

On that basis, my client has requested that I formally request Council to issue a new Acknowledgement Notice for the application on the basis that it is Code Assessable and that any applicable refund of fees resulting from the change from Impact Assessable to Code Assessable be forwarded to him immediately at:

Mr A Brons
4/393 Draper Street
Cairns QLD 4870


My client is keen to progress the application and on this basis it is requested that the new Acknowledgement Notice be issued immediately.

Thankyou for your assistance in the matter.

Yours faithfully,

**PLANNING FAR NORTH
Town Planning Consultants**



 **ELIZABETH TAYLOR**
Director

PFN

From: Elphinstone Jenny [j.elphinstone@cairns.qld.gov.au]
Sent: Tuesday, 28 September 2004 9:52 AM
To: planningfarnorth@ozemail.com.au
Subject: copy of amended Ack. notice for 8/8/564

<<\$24y01!_doc>> Liz, this was posted 15 September, 2004. We are pursuing a refund cheque from Finance. the Prostitution Licensing Authority was posted a copy of the Amended Acknowledgement notice and the PLA has advised it has no comments nor seeks any further information.

Jenny Elphinstone
Senior Planning Officer
Cairns City Council

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28/09/2004

ENQUIRIES: Jenny Elphinstone
PHONE: 4044 3365 Fax 4044 3836
YOUR REF:
OUR REF: 8/8/564-01 (842578)

15 September 2004

Mr Aart Brons
4/393 Draper Street
CAIRNS QLD 4870

Copy
Recd by PPN
28/09/05
GA

Dear Sir

AMENDED ACKNOWLEDGMENT NOTICE FOR
DEVELOPMENT APPLICATION - 8/8/564
MATERIAL CHANGE OF USE – BROTHEL
11 CAVA CLOSE, BUNGALOW

I refer to your Development Application, which was received by Council on 17 February 2004 and the Court Order dated 10 September 2004. In response to that Order please find attached an Amended Acknowledgement Notice. A refund of \$250.00 for difference between the Code Assessable application fee and the Impact Assessment application fee will be forwarded shortly.

It is indicated on the Acknowledgment Notice that the Prostitution Licensing Authority is a third party advice agency. Council has forwarded a copy of the Amended Acknowledgment Notice to the Authority and a copy of that referral is attached.

Please note that the Amended Acknowledgement Notice retains the requirement for further information to be submitted. This information is detailed as follows.

1. Please provide a report that outlines full compliance with all of the requirements Prostitution Regulations 2000, in particular Schedule 3, being the IDAS Code for Development Applications.
2. Your application needs to be accompanied by a plan which clarifies the extent of development proposed. Please provide a minimum dimensioned 1:50 metric scale plan of the proposed building and site, including the internal layout of the premises and elevations. The purpose and dimensions of all rooms must be detailed on the plan.
3. Please provide comments in relation to the residence at 150-172 McCoombe Street, having regard to Section 64(1)(a)(ii) of the Prostitution Act 1999

If necessary, Council is willing to convene a meeting to discuss the above information request.

As an applicant, your responsibilities in regard to the information request are outlined in Section 3.3.8 of the Integrated Planning Act 1997, which is attached for your information. You are reminded that a response to the request for further information must be submitted prior to the commencement of any public notification of the development application.

Your attention is also drawn to Section 3.2.9 of the Integrated Planning Act 1997 and that if the information request response materially changes the nature and detail of the application submitted, other than responding to the information request, then the application will return to the Acknowledgement Notice stage of the IDAS process.

Should you have any queries in relation to this Acknowledgment Notice, please contact Mrs Jenny Elphinstone of Council's City Assessment Team on telephone number 4044 3365.

Yours faithfully

P M Tabulo
General Manager City Development

Att.

ENQUIRIES: Jenny Elphinstone
PHONE: 4044 3365 Fax 4044 3836
YOUR REF:
OUR REF: 8/8/564-01 (842578)

15 September 2004

AMENDED ACKNOWLEDGMENT NOTICE FOR
DEVELOPMENT APPLICATION - 8/8/564
MATERIAL CHANGE OF USE – BROTHEL
11 CAVA CLOSE, BUNGALOW

PROPOSAL: Licensed - Brothel

APPLICANT: Aart Brons
4/393 Draper Street
CAIRNS QLD 4870

LOCATION OF SITE: 11 Cava Close, Bungalow

REAL PROPERTY DESCRIPTION: Lot 7 on SP101286, Parish of Cairns

TYPE OF DEVELOPMENT: Material Change of Use – Code Assessment

CODE ASSESSMENT REQUIRED: Yes
- IDAS Code, Prostitution Regulation 2000
- Cairns City Council Development Manual

IMPACT ASSESSMENT REQUIRED: No

ASSESSMENT MANAGER DOES INTEND TO MAKE AN INFORMATION REQUEST Yes (Refer to attached letter)

REFERRAL AGENCIES: Prostitution Licensing Authority
GPO Box 3196
Brisbane QLD 4001
(Third Party Advice)

REFERRAL COORDINATION REQUIRED: No

P M Tabulo
General Manager City Development

Att.

Our Ref: C04-023

Your Ref: 8/8/564

Chief Executive Officer
Cairns City Council
P O Box 359
CAIRNS QLD 4870

11 October, 2004

Attn: Ms Jenny Elphinstone

Dear Sir,

**RE: DEVELOPMENT APPLICATION 8/8/564
PROPOSED LICENSED BROTHEL 11 CAVA CLOSE,
BUNGALOW.**

I refer to the Amended Acknowledgment Notice issued on 15 September 2004 following the Court Order dated 10 September 2004, which determined the above referenced application to be Code Assessable.

I note Items 1 and 2 referenced in the letter accompanying the Amended Acknowledgment Notice, which require full compliance with the requirements of the Prostitution Regulation 2000, in particular Schedule 3 and an accompanying Concept Plan.

In relation to Item 3 of the letter accompanying the Amended Acknowledgment Notice, I advise that my client is of the view that compliance with Section 64(1)(a)(ii) of the Prostitution Act 1999 was properly dealt with, in his favour, by Judge Skoien in his Judgement handed down on 10 September 2004. Therefore, it is not an issue which requires any further consideration by my client or the Council in progressing the Code Assessable application for a Licensed Brothel at 11 Cava Close, Bungalow.

Upon written confirmation being received from the Council that Item 3 is no longer relevant to the assessment of the application, my client will proceed to address Items 1 and 2 of the letter from Council accompanying the Amended Acknowledgment Notice.

I look forward to hearing from you at the earliest opportunity.

Yours faithfully,

**PLANNING FAR NORTH
Town Planning Consultants**



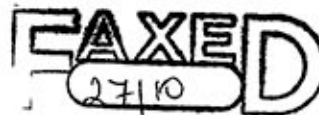
ELIZABETH TAYLOR
Director



CAIRNS
CITY COUNCIL

ENQUIRIES: Mrs Jenny Elphinstone
PHONE: 4044 3365 Fax 4044 3836
YOUR REF:
OUR REF: 8/8/564-01 (887365)

27 October 2004



Facsimile: 4051 0866

Planning Far North
PO Box 7801
CAIRNS QLD 4870

Attention Ms Liz Taylor

Dear Madam,

119-145 Spence Street,

Cairns Qld. 4870

P.O. Box 359,

Cairns, Qld. 4870

Telephone: (07) 4044 3044

Facsimile: (07) 4044 3022

council@cairns.qld.gov.au

www.cairns.qld.gov.au

ABN 21 543 571 965

DEVELOPMENT APPLICATION - 8/8/564
MATERIAL CHANGE OF USE - BROTHEL
11 CAVA CLOSE, BUNGALOW

I refer to your letter of 11 October 2004 in respect of the Amended Acknowledgement Notice issued by Council.

I advise that if your client is of the view that His Honour Senior Judge Skoien's Judgment of 10 September 2004 decided on the separation distance between the proposed brothel and the residence at 150-172 McCoombe Street, your client is mistaken.

Your client's application to the Court determined by Senior Judge Skoien was for a declaration that the application was code assessable. Your client did not request and did not obtain a declaration regarding the application of section 64(1)(a)(ii) of the *Prostitution Act*. A plain reading of the Originating Application and Judgment clearly shows this.

In the circumstances, Council requires that you address Item 3 of the information request. The residence located at 150-172 McCoombe Street is:-

1. within 200m of the proposed brothel;
2. approved as a dwelling house and not caretaker's residence. This fact was established before the Court in evidence in the 2001 proceedings at which Ms Taylor gave evidence.

Yours faithfully

P M TABULO

General Manager City Development

Our Ref: C04-023

Your Ref: 8/8/564

Chief Executive Officer
Cairns City Council
P O Box 359
CAIRNS QLD 4870

BC Mr Aart Brons

01 November, 2004

Attn: Ms Jenny Elphinstone

Dear Sir,

**RE: DEVELOPMENT APPLICATION 8/8/564
PROPOSED LICENSED BROTHEL 11 CAVA CLOSE,
BUNGALOW.**

On the 15 September 2004 Council issued an Amended Acknowledgment Notice in relation to the above referenced application. By letter dated 11 October 2004, I responded to the letter accompanying the Amended Acknowledgment Notice, in particular, with regard to Item 3. By letter dated 27 October 2004 Council responded to that letter. On the basis of Councils' letter Item 3 of the Acknowledgment Notice remains unresolved.

Prior to finalising the detailed design of the proposed Licensed Brothel, which my client intends to undertake in full compliance with Schedule 3 of the Prostitution Regulation 2000, I now provide further detailed information regarding Item 3 of the letter accompanying the Amended Acknowledgment Notice, on behalf of my client.

Item 3 states:

3. *Please provide comments in relation to the residence at 150 – 172 McCoombe Street, having regard to Section 64(1)(a)(ii) of the Prostitution Act 1999.*

Section 64(1)(a)(ii) states:

64 *When assessment manager must refuse application*

(1) *The assessment manager must refuse a development application if-*

(a) *the application land –*

.....

- (ii) *is within 200 m of the closest point on any boundary of land on which there is a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities;*

measured according to the shortest route a person may reasonably and lawfully take, by vehicle or on foot, between the application land and the other land; or

.....

- (2) *In this section-*

“residential building”, for subsection 1(a)(ii) and 1(b), means a building or part of a building used primarily for private residential use, other than a building or part of a building used only for a caretaker’s residence on land in an industrial area.

In relation to Item 3 of the letter accompanying the Amended Acknowledgment Notice, I provide the following commentary/observations.

My client is firmly of the view that the boundary of Lot 2 on RP 730391 being 150 – 172 McCoombe Street, Bungalow is not within 200 metres of the lot boundary of the proposed Licensed Brothel.

My client, is also of the view that His Honour, Senior Judge Skoein, in his judgement delivered on 10 September 2004, concludes that there is no residential building within 200 metres of the proposed site of the Licensed Brothel. His view is based on the relevant sections of the Judgement which state, in part:

- (26) *At the outset, I dismiss any suggestion that the relevant areas in which the brothel site stands includes the retirement village or the pony club. They are admittedly quite close to it as the crow flies. The nearest boundary of the land on which the retirement village stands is a little less than 100 metres from the site; the nearest boundary of the pony club is a little less than 200 metres from the site. But as a matter of fact the concrete drain presents as an impassable barrier to vehicles and pedestrians. The heavy vegetation acts as a complete visual barrier. The village and the club face away from the site.*
- (27) *On the site side of the concrete drain there is no residence, nor land used for residential purposes, within 300 metres of the site as the crow flies. That is the distance from the site of the closest residence in McCoombe Street. Within that radius there is no realistic prospect of land being used for other than industrial purposes. The planning scheme instruments to which I have referred designate all of this area as industrial. The current zoning, the current strategic plan and the propose CairnsPlan make that clear. And to the north east, east and south east are much larger stretches of land which is industrial now and/or will be industrial. The only residential land relevant to the identification of the relevant area of the proposed brothel is that in McCoombe Street.*

- (28) *Does the residential area of McCoombe Street form part of the area of the site? If it did, then I would have to decide the predominant character of that area. As the crow flies the residential area of McCoombe Street begins more than 300 metres to the west of the site. On my estimate, by most direct road access, the distance is about 500 metres. The site itself would not be visible to users of McCoombe Street as it lies, I estimate about 200 metres from the intersection of McCoombe Street and Cava Close. So there is a considerable physical separation of the brothel site from the closest McCoombe Street house.*
- (29) *I am unable to conclude that the area of the brothel site extends to include any residence in McCoombe Street. Indeed, I think it is helpful to ask myself, would the residents of McCoombe Street, if asked to describe the "area" in which they live, have mental reference to the obvious industrial area commencing about 300 metres to the east and to the industrial traffic that passes them to and from that area, and answer "we live in an industrial area"? I think not.*
- (30) *My decision on the third question is therefore that the relevant area which contains the site is not, even in part a residential area. It is an industrial area, appropriately designated by the planning instruments.*
- (31) *I should record that I was told that some residents of McCoombe Street make use of some of the vacant industrial land near the site as a recreation area. That does not convert industrial land into a residential area or part residential area. It simply means that the residents are making opportunistic use of land which happens to be vacant but which is, undeniably, industrially designated land.*

In any event, and regardless of the outcome of the 200 metre issue, it is my professional opinion that 150 – 172 McCoombe Street, Bungalow is **not** land on which there is:

- a residential building
- a place of worship
- a hospital
- a school
- a kindergarten
- or any other facility or place regularly frequented by children for recreational or cultural activities.

Outlined below are the land use planning grounds upon which I have based my professional opinion.

In coming to this determination I have taken account of the relevant provisions of the 1971 and 1996 Planning Schemes for Cairns City and the relevant sections of IDAS Implementation Note 31 August 2003 Version 2.0, which are outlined below:

Caretaker's Residence

A caretaker's residence, where used in association with an industrial use, is unlikely to be a residential building, since the building is not primarily used for private residential use. The primary use of the land in this instance is likely to be industrial.

Places regularly frequented by children

Although not specified in the legislation, in certain circumstances a place regularly frequented by children may include roads or paths used by children for direct access to regularly frequented places, for example a school or a train station.

1971 Planning Scheme

Currently situated on Lot 2 on RP 730391 being 150 – 172 McCoombe Street, is the Richardson's building contractors depot, comprised of a number of large industrial sheds, outside storage area, a residence and an office. The residence was erected following the issue of a Consent approval in January 1977 under the Cairns City 1971 Planning Scheme. At that time the land was zoned Heavy Industry.

Heavy Industry was defined in the 1971 Planning Scheme as follows:

Heavy Industry – Any industry included in Appendix II hereto:

Appendix II

<i>Aircraft factories</i>	<i>Ink works</i>
<i>Alumina plants</i>	<i>Iron pipe works</i>
<i>Asbestos product works</i>	<i>Iron and steel works</i>
<i>Asphalt works</i>	<i>Machinery manufacture and repairs</i>
<i>Bitumen works</i>	<i>Metalware manufacturing</i>
<i>Blacksmithing</i>	<i>Nail manufacturing</i>
<i>Boiler disencrustant fluid manufacturing</i>	<i>Oil manufacture (not petroleum oils)</i>
<i>Boiler works</i>	<i>Paper manufacturing</i>
<i>Brick and pottery works</i>	<i>Paper mills</i>
<i>Breweries</i>	<i>Plywood mills</i>
<i>Canister works</i>	<i>Power houses</i>
<i>Car wrecking</i>	<i>Radiator manufacturing</i>
<i>Cardboard manufacturing</i>	<i>Salt-lick manufacturing</i>
<i>Cistern manufacturing</i>	<i>Sand and gravel screening plants or depots</i>
<i>Concrete products manufacturing (pipes, blocks slabs or heavy articles)</i>	<i>Sawmills</i>
<i>Cotton ginneries</i>	<i>Sheet-metal works</i>
<i>Cutlery works</i>	<i>Smithies</i>
<i>Earthenware works</i>	<i>Spring works</i>
<i>Electric welding works</i>	<i>Starch mills</i>
<i>Enamelling works</i>	<i>Steel fabricating works</i>
<i>Engineering works (heavy)</i>	<i>Stove manufacturing or repairing</i>
<i>Floor coverings manufacturing</i>	<i>Sugar mills or refineries</i>
<i>Flour mills</i>	<i>Textile mills</i>
<i>Foundries</i>	<i>Toolmakers</i>
<i>Galvanising works</i>	<i>Tyre manufacturing</i>
<i>Galvanised iron works</i>	<i>Vulcanising works</i>
<i>Glass manufacturing</i>	<i>Welding works</i>
<i>Grinding mills (cereal)</i>	<i>Wire netting manufacturing</i>
	<i>Woollen mills</i>

Under the Table of Zones in the 1971 Planning Scheme the “Permitted” or “As of Right” uses in the Heavy Industry zone were

- Heavy Industry; and
- Light Industry.

All residential uses were prohibited in the Heavy Industry zone, with the exception of a Dwelling-house, which required the “consent” approval of Council.

Under the 1971 Planning Scheme, a Caretaker’s Residence was not a defined term.

Under the 1971 Planning Scheme a Dwelling-house was defined as follows:

“Dwelling-house” – Any land, building, or other structure which comprises or is intended to comprise only self-contained accommodation for the exclusive use of one family, including such out-buildings as are incidental to and necessarily associated with a dwelling-house.

However, the consent approval granted over 150 – 172 McCoombe Street in 1977 was **not** granted for a Dwelling-house, it was granted for a “RESIDENCE TO REPLACE AN EXISTING RESIDENCE”.

A copy of the Council consent approval and the approved plans are attached.

While the approved plans are difficult to read in any detail, it is clear that the proposed siting of the residence towards the narrowest section of this triangular site, leaves the balance and larger part of the site to be developed for Heavy Industrial purposes in accordance with the zoning of the land and, in fact, sheds already existed on the site, refer Drawing 3/3.

The residence was built at the location identified on the approved plans and the site is now fully developed for heavy/general industry purposes in the form of a building contractor’s depot.

The primary use of the site is a heavy industrial use comprising a building contractor’s depot which includes the storage and construction of large building supplies and materials and the storage of heavy equipment. The secondary use of the site is the residence, which should properly be defined as a Caretaker’s Residence given its ancillary function to the primary industrial use.

1996 Transitional Planning Scheme

The site is currently zoned General Industry under the 1996 Transitional Planning Scheme. A Detached Dwelling is “Prohibited” in this zone. However a Caretaker’s Residence is “Permitted” or “As of Right” in the zone.

The relevant definitions are as follows:

Detached Dwelling

Any premises used or intended for use as self contained accommodation for the exclusive use of one family on a single allotment of land and including any ancillary outbuildings.

Caretaker's Residence

Any residential premises used or intended for use for caretaker or management purposes only, in connection with any industry or other non-residential use conducted on the same site.

The intent of the General Industry zone states:

The intent of the General Industry zone is to provide areas for heavy manufacturing, engineering and bulk storage, as well as for a broad range of other industrial activities.

Appropriate design requirements will apply to the development of land in this zone.

Offices are intended only to be permitted where directly associated with other activities permitted in the zone. Developments which attract the general public, such as intensive recreation, show rooms and vehicle sale yards will be prohibited. Through traffic will not be encouraged into areas zoned General Industry.

In land use planning terms, I have always been of the view that the residence located at 150 – 172 McCoombe Street falls within the definition of a Caretaker's Residence because the residential activity is not the primary use of the land. The primary or "dominant" use of the land is the building contractors depot. The residence is therefore ancillary to the primary industrial use and on that basis has a caretaker function.

Finally, in response to previously identified concerns of Council regarding a bike track which could be used by children on the site and is located adjacent to the residence at 150 – 172 McCoombe Street, I make the following observations:

- Firstly, there is nothing to suggest that a Caretaker's Residence cannot be occupied by a family, including children. In fact it must be common for caretakers to have family members living on site and to have ancillary recreational facilities such as swimming pools, swings, sandpits and indeed bike tracks for use by the children residing in the Caretaker's Residence.
- Secondly, the reference to "a facility or place regularly frequented by children" suggests that the children visit the facility or place for recreational or cultural activities such as a public sportsground or cinema complex, not that the recreational activities are associated with or allied to a residence on the site.

In summary, I remain of the view that the residence located at 150 – 172 McCoombe Street in association with a building contractor's depot is not a "residential building" and the bike track is not "any other facility or place regularly frequented by children for recreational or cultural activities", for the purposes of Section 64(1)(a)(ii).

I trust the above information will assist you in determining that Item 3 of the letter accompanying the Amended Acknowledgment Notice, which refers to Section 64(1)(a)(ii) of the Prostitution Act 1999, has been satisfactorily addressed. Upon receipt of written confirmation to this effect my client will then proceed to address Items 1 and 2 of the letter accompanying the Amended Acknowledgment Notice.

Thank you for your consideration of this advice and I look forward to hearing from you at your earliest convenience to enable the application to be progressed.

Yours faithfully,

PLANNING FAR NORTH
Town Planning Consultants



ELIZABETH TAYLOR
Director

ENQUIRIES: Mrs Jenny Elphinstone *JE.*
PHONE: 4044 3365 Fax 4044 3836
YOUR REF:
OUR REF: 8/8/564-01 (924095)



13 December 2004

Planning Far North
PO Box 7801
CAIRNS QLD 4870

Facsimile: 4051.0866

Attention Ms Liz Taylor

Dear Madam,

119-145 Spence Street,
Cairns Qld. 4870
P.O. Box 359,
Cairns, Qld. 4870
Telephone: (07) 4044 3044
Facsimile: (07) 4044.3022
council@cairns.qld.gov.au
www.cairns.qld.gov.au
ABN 21 543 571 965

DEVELOPMENT APPLICATION - 8/8/564
MATERIAL CHANGE OF USE - BROTHEL
11 CAVA CLOSE, BUNGALOW

I refer to your Council's correspondence on the above matter and advice in regards to Section 64 Prostitution Act 1999, Council believes that the site is within 200 metres of a residential building and land for which a residential development has been approved. That land, being 150-172 McCoombe Street.

Council does not believe that the existing judgements have given determination on the use of the dwelling on the land at 150-172 McCoombe Street being anything other than a residential development or residential building.

Unless you can substantiate through a qualified Surveyor's measurement that the land at 150-172 McCoombe Street is sited at a distance greater than 200m from the subject land, as measured by the requirements of the Prostitution Act 1999; or you can substantiate through a declaration sought from the Independent Assessor that the premises at 150-172 McCoombe Street is not a residential building or a residential development, Council will have to refuse the application.

You may wish to clarify this matter prior to responding to Council's request for further information.

Yours faithfully

Nikki Huddy
Manager City Assessment



Prostitution Licensing Authority
Queensland Government

FACSIMILE

To:
Attention: Liz Taylor
Fax No: 4051 0866
From: Margaret Isaac
Phone No: 3858 9500
Date Sent: 22 December 2004
No. of Pages: 3 *including this page*
Subject: 11 Cava Close, Bungalow, Cairns

Liz

Please refer to the Independent Assessor's advice. Please feel free to call if you need any further information.

Regards

Margaret Isaac

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE MAY BE CONFIDENTIAL INFORMATION, AND MAY ALSO BE THE SUBJECT OF LEGAL PROFESSIONAL PRIVILEGE AND/OR PUBLIC INTEREST IMMUNITY. IF YOU ARE NOT THE INTENDED RECIPIENT, ANY USE, DISCLOSURE OR COPYING OF THIS DOCUMENT IS UNAUTHORISED. IF YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, PLEASE TELEPHONE: (07) 3109 4900.

Prostitution Licensing Authority
GPO Box 3196, Brisbane, Qld 4001
1 level 3, 5 Gardner Close, Milton Qld. 4064

Message

Isaac.MargaretW[PLA]**Subject:** FW: 11 Cava Close, Bungaiow

Dear Margaret,

In answer to your facsimile, I am of the view that the only jurisdiction of the Independent Assessor is contained in s.64K of the *Prostitution Act* ("the Act") which reads as follows:

64K Appeals by applicants

(1) An applicant for a code assessable development application may, as permitted under the Integrated Planning Act, section 4.1.27 appeal to the independent assessor against—

- (a) the assessment manager's refusal, or the refusal in part, of the application, or
- (b) a matter stated in a development approval for the application, including any condition applying to the development; or
- (c) a decision to give a preliminary approval when a development permit was applied for; or
- (d) the length of a currency period; or
- (e) a deemed refusal.

(2) The appeal must be started within 20 business days after—

- (a) the decision notice is given to the applicant; or
- (b) if a negotiated decision notice is also given to the applicant—the negotiated decision notice is given to the applicant.

(3) If the appeal is made to the Planning and Environment Court, the court must not hear or decide the appeal.

(4) Subsections (1) and (3) do not prevent the making of an application under the Integrated Planning Act, section 4.1.21 for a declaration about the meaning, effect or enforcement of a condition of a development approval.

The reference in subs.(4), as I read it, only provides that the Planning and Environment Court is not prevented from making declarations about matters arising under the Act although it may not hear Code Assessable appeals. That court has an express jurisdiction for that purpose.

The only orders that the Independent Assessor may make are set out in s.64U of the Act which reads as follows:

***64U Appeal decision**

(1) In deciding an appeal the independent assessor may make the orders the independent assessor considers appropriate.

(2) Without limiting subsection (1), the independent assessor may—

- (a) confirm the decision appealed against; or
- (b) change the decision appealed against; or
- (c) set aside the decision appealed against and make a decision replacing the decision set aside.

(3) If the independent assessor acts under subsection (2)(b) or (c), the independent assessor's decision is taken, for this Act (other than this division) and the Integrated Planning Act to be the decision of the assessment manager that made the decision appealed against.

(4) The assessor's registrar must give all parties to the appeal and the Authority notice of the independent assessor's decision and the reasons for the decision.

Message

(5) The independent assessor's decision can not be appealed against under this Act or the Integrated Planning Act."

I have had recourse to the decision of Senior Judge Skoien in *Brons v Cairns City Council*. [2004] QPEC 56. His decision and the declaration made by him relate solely to the questions raised in s.63A of the Act, namely, whether the proposed site is "industrial land". On that point, it is binding on all parties to the action before him. As I understand his decision, it does not purport to decide any question raised under s.64 which involve obligatory refusal if the separation distances provided for therein are not complied with although statements contained in paragraph 26 of the reasons may have some relevance to s 64 issues.

The s.64 issues should be decided by the local government on the basis of the information available to it (including information provided by the applicant). If it refuses an application based on s.64 or on any other basis, an appeal to the Independent Assessor would be available and the Independent Assessor would decide the same issue based on evidence before him. (See the decision of the Independent Assessor in *Podesta*).

However, the Independent Assessor is completely a creature of statute and only has the jurisdiction bestowed on him by statute. On my current reading, I can perceive no jurisdiction to grant declaratory relief.

This is not a formal decision and is not meant to substitute for the applicant's own legal advice. I do not, however, subject to that caveat, have any objection to your passing on the contents of this communication. I hope it is of some assistance.

Regards

Stephen Keim
22 December 2004.

Our Ref: C04-023

Your Ref: 8/8/564

Chief Executive Officer
Cairns City Council
P O Box 359
CAIRNS QLD 4870

BC Mr Aart Brons

23 December, 2004

Attn: Ms Jenny Elphinstone

Dear Sir,

**RE: DEVELOPMENT APPLICATION 8/8/564
MATERIAL CHANGE OF USE – BROTHEL
11 CAVA CLOSE, BUNGALOW.**

Thank you for your letter dated 13 December 2004 which deals with Section 64 of the Prostitution Act 1999 and its relevance to the above referenced application.

I note your suggestion that my client either substantiate through a qualified Surveyor's measurement that the land at 150 – 172 McCoombe Street is sited at a distance greater than 200 metres from the site of the proposed Brothel

OR

substantiate through a declaration sought from the Independent Assessor that the premises at 150 – 172 McCoombe Street is not a residential building or a residential development.

My client has no intention of engaging a qualified Surveyor to define the distance between the site of the proposed Brothel and 150 – 172 McCoombe Street, as he remains firmly of the view that the residence on that site is a Caretaker's Residence and therefore the distance between the two sites is irrelevant.

In regard to your second option, please be advised that Planning Far North has approached the Independent Assessor through the Prostitution Licensing Authority (PLA) to seek a Declaration on this issue, as suggested.

The Independent Assessor has provided written advice which indicates that he has no jurisdiction to grant declaratory relief in this regard. A copy of his

advice that was directed in the first instance, to Ms Margaret Isaac of the PLA is attached for your information.

Therefore, on behalf of my client I require that the Council determine Section 64 as it relates to this application.

I look forward to hearing from you early in the New Year.

Yours faithfully,

PLANNING FAR NORTH
Town Planning Consultants



ELIZABETH TAYLOR
Director

ENQUIRIES: Mrs Jenny Elphinstone
PHONE: 4044 3365 Fax 4044 3836
YOUR REF:
OUR REF: 8/8/564-01 (932292)



11 January 2005

Mr A Brons
C/- Planning Far North
PO Box 7801
CAIRNS QLD 4870

Facsimile: 4051 0866

Attention: Ms Liz Taylor

FAXED

Dear Madam,

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DEVELOPMENT APPLICATION - 8/8/564
MATERIAL CHANGE OF USE - BROTHEL
11 CAVA CLOSE, BUNGALOW

I refer to your Council's correspondence on the above matter dated 23 December 2004.

For Council to further process the above application please submit the information requested by Council's letter dated 15 March 2004, which was posted 16 March 2004.

In regards to previous discussions regarding the land use of 150-172 McCoombe Street, please be advised that Council Officers are of the opinion that this property lies within 200m of the subject land and a residential development has been approved on the McCoombe Street site. As such Council Officers will be recommending to Council that your client's application be refused in regards to Section 64 Prostitution Act 1999.

Should you wish the application be determined please respond to the information request. If a response is not received prior to 16 March 2005 Council will consider that the application has lapsed as per the requirements of the Integrated Planning Act.

Yours faithfully

Nikki Huddy
Manager City Assessment